Filed 4/5/19 P. v. Adams CA3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE, Plaintiff and Respondent, v. CRAIG IVAN ADAMS, Defendant and Appellant.	C078856 (Super. Ct. No. S10CRF0301)

A jury convicted defendant Craig Ivan Adams of multiple burglaries along with firearm and drug possession violations. The trial court sentenced him to 50 years 4 months in prison.

Defendant now contends (1) his trial counsel was ineffective in failing to move to suppress defendant's statements made after arrest; (2) there was insufficient evidence to corroborate the testimony of defendant's accomplice regarding the burglaries; (3) the trial court improperly imposed two one-year sentence enhancements under Penal Code section 667.5, subdivision (b);[1] and (4) the matter must be remanded for resentencing or further proceedings because the trial court did not explain the precise penal consequences of admitting prior conviction allegations.

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[1] Undesignated statutory references are to the Penal Code.

We conclude (1) defendant has not established ineffective assistance because trial counsel may have had a tactical reason for not objecting to defendant's statements after arrest; (2) there is sufficient evidence to corroborate the testimony of defendant's accomplice regarding the burglaries; (3) based on the totality of the circumstances, we conclude defendant admitted a prior prison term, but the record does not support imposition of more than one enhancement for the prior prison term under section 667.5, subdivision (b); and (4) defendant forfeited his claim that the trial court failed to advise him of the penal consequences of admission of the prior conviction allegations by failing to object in the trial court.

We will modify the judgment to strike one of the prior prison term enhancements and affirm the judgment as modified.

BACKGROUND

From July to November 2010, multiple burglaries were committed along the Highway 50 corridor between Sacramento and South Lake Tahoe. Detectives from the El Dorado County Sheriff's Department were eventually able to connect defendant and his girlfriend, Katy Manoff, to the burglaries. Defendant and Manoff committed the burglaries so they could sell the property and obtain money for heroin. At the time of their arrest Manoff had $2,400 in her purse and defendant had $4,382 in his possession, as well as business cards for jewelry shops, coin shops, and pawn shops. A search of their motel room in South Lake Tahoe revealed property taken in the burglaries, along with firearms and heroin. Manoff had pawned some of the stolen property.

Manoff ultimately pleaded guilty to multiple burglaries, and the trial court sentenced her to 22 years 4 months in prison. She testified for the prosecution in this case against defendant. The prosecution obtained cell phone records showing the location of defendant's and Manoff's cell phones during some of the burglaries.

We set forth relevant details for each count asserted against defendant, including the victim's name in parentheses, the jury's verdict, the applicable statute, and, for some of the counts, a brief recitation of evidence presented at trial concerning that count:

Count 1 (Nissen). The jury found defendant guilty of first degree residential burglary (§ 459) committed on November 13, 2010. Surveillance video showed Manoff's red car, occupied by two people, entering and exiting the neighborhood of the Nissen home around the time of the burglary. A telephoto lens and a gun were taken during the burglary. A hole in a bedspread and sheets indicated that a gun had been discharged. Manoff's cell phone was in the area of the Nissen home at the time. Defendant, in his statement to detectives after his arrest, admitted that he accidentally discharged a gun into the bed, and he directed investigators to where he hid the gun. Manoff testified that she knocked on the door to the residence, and when no one answered, defendant went into the house and eventually returned to Manoff with a camera lens and a gun.

Count 2 (Allessio). The jury found defendant guilty of first degree residential burglary (§ 459) committed on October 27, 2010. During the burglary of the Allessios' home, a distinctive lighter and arrowheads were taken, along with jewelry and other items. The lighter and arrowheads were found in defendant's motel room. The cell phones of both defendant and Manoff were in the area of the Allessio home at the time of the burglary. Manoff testified that she knocked on the door to the residence, and when no one answered, defendant walked around the side of the house and eventually returned to Manoff with a pillowcase full of miscellaneous items, including the lighter.

Count 3. The jury was unable to reach a verdict on a charge of possession for sale of a controlled substance (Health & Saf. Code, § 11351) on November 17, 2010.

Count 4. The jury found defendant guilty of possession of a firearm by a convicted felon (former § 12021, subd. (a)(1)) committed on November 17, 2010.

Count 5. The jury found defendant guilty of possession of a firearm by a convicted felon (former § 12021, subd. (a)(1)) committed on November 17, 2010.

Count 6. The jury found defendant guilty of possession of a firearm by a convicted felon (former § 12021, subd. (a)(1)) committed on November 17, 2010.

Count 7. The jury found defendant guilty of possession of ammunition by a convicted felon (former § 12316, subd. (b)(1)) committed on November 17, 2010.

Count 8 (Martyn). The jury was unable to reach a verdict on a charge first degree residential burglary (§ 459) on October 16, 2010.

Count 9 (Little). The jury found defendant guilty of first degree residential burglary (§ 459) committed on September 30, 2010. Lai-Lai Bui Little and her husband were both police officers. During the burglary of their home, a photo of the Littles in uniform was on the dresser and uniforms were in the closet. The cell phones of both defendant and Manoff were in the area of the Little home at the time of the burglary. Manoff pawned jewelry from the Little home. In his statement after his arrest, defendant referred to the home of an Asian police officer. Manoff testified that she knocked on the front door to make sure no one was home before defendant went in. Defendant told Manoff it appeared that police officers lived at the home.

Count 10 (Salinger). The jury found defendant guilty of first degree residential burglary (§ 459) committed on October 6, 2010. Defendant and Manoff's cell phones were in the area when the Salinger home was burglarized. Defendant went with Manoff on the same day to pawn items taken in the burglary. Defendant participated in the transactions, but only Manoff's name was put on the receipt. Manoff testified that she knocked on the door, and when no one answered, defendant went inside.

Count 11 (Lawrence and Nancy Arens). The jury found defendant guilty of first degree residential burglary (§ 459) committed on September 26, 2010. Defendant knew Lawrence and Nancy Arens from church when he was a teenager. The Arens' home was burglarized while they were at church. Manoff pawned some of the property, including a

piece of jewelry with the Arens' names. Manoff testified that she stayed in the car while defendant went into the Arens' home. After the burglary, defendant and Manoff counted the cash taken and sold the jewelry. The cell phones of both defendant and Manoff were in the area of the Arens' home when the home was burglarized. In his statement after his arrest, defendant admitted burglarizing the Arens' home.

Count 12 (Niven). The jury found defendant guilty of first degree residential burglary (§ 459) committed on October 18, 2010. The Nivens' home was burglarized and a distinctive dragonfly bracelet was taken. The cell phones of both defendant and Manoff were in the area of the Nivens' home around the time the home was burglarized. Two Tiffany jewelry bags taken in the Niven burglary were found in defendant's motel room. Manoff testified that she knocked on the front door of the Nivens' home, and when no one answered, defendant entered the home and came out with jewelry, including the dragonfly bracelet.

Count 13 (Rooker). The jury found defendant guilty of attempting to commit first degree residential burglary (§§ 459, 664) on October 6, 2010. An El Dorado County Sherriff's deputy was sent to the Rookers' home in response to a report of a prowler. Surveillance video showed a red car occupied by two people enter the community where the Rookers' home was located around the time of the reported prowler. On the day of the Rooker attempted burglary, defendant and Manoff went together to pawn the items taken from the Salinger home, which was burglarized the same day, and in the same neighborhood where the prowler was seen at the Rookers' home. Manoff testified that she and defendant were in the red car shown on the surveillance video. Manoff knocked on the door of the Rookers' home, and when no one answered, defendant went around the side of the house, but soon returned to the car in a panic because a woman in the house pointed a gun at him.

Count 14 (Danny and Jerri Arens). The jury found defendant guilty of first degree residential burglary (§ 459) committed on October 17, 2010. Defendant admitted he

burglarized Danny and Jerri Arens' home. The cell phones of both defendant and Manoff were in the area of the Arens' home when the home was burglarized. Manoff testified that she and defendant committed the burglary.

Count 15 (McCarthy). The jury found defendant guilty of first degree residential burglary (§ 459) committed on October 28, 2010. The cell phones of both defendant and Manoff were in the area of the McCarthys' home when the home was burglarized. Manoff pawned items from the McCarthy burglary and testified that she knocked on the door of the McCarthys' home, and when no one answered, defendant went into the house. He returned to the car with jewelry, ammunition, and other items.

Count 16 (Nissen). The jury found defendant guilty of theft of a firearm (§ 487, subd. (d)(2)) committed on November 13, 2010. Our description for Count 1 explains the circumstances of the burglary of the Nissen home on the same date.

Count 17 (Felton). The jury found defendant guilty of first degree residential burglary (§ 459) committed on July 26, 2010. El Dorado County Sheriff's Sergeant Chris Felton testified that his home was burglarized. During the burglary, a shotgun was taken out of his closet and left against the wall outside the closet. Property taken during the burglary was never recovered. In defendant's statement after his arrest, he said he moved the shotgun and took some jewelry, which was pawned in Carson City.

Count 18. The jury found defendant guilty of possession of a firearm by a convicted felon (former § 12021, subd. (a)(1)) committed on November 16, 2010.

Count 19. The jury found defendant guilty of possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a)) committed on November 16, 2010.

In addition to the substantive counts, the amended information alleged that defendant had a prior prison term (§ 1063), a prior strike conviction (§ 667(b)-(i)), and a prior serious felony conviction (§ 667, subd. (a)(1)). Defendant admitted various enhancement allegations.

The trial court sentenced defendant but then recalled the sentence and sentenced him again because the trial court had imposed too many prior serious felony conviction enhancements. With the correction, the trial court imposed a total sentence of 50 years 4 months in prison.

Additional background details are provided in the discussion as relevant to the contentions on appeal.

DISCUSSION

I

Defendant contends his trial counsel was ineffective in failing to move to suppress defendant's statements obtained after arrest.

A

On November 17, 2010, Detective Richard Horn and Detective Jeff Leikauf with the El Dorado County Sheriff's Department interviewed defendant at the South Lake Tahoe Police Department. At the beginning of the interview and numerous times during the interview, defendant said he was sick from coming off drugs. He was cold and shaking, did not feel well, could not think straight, could not talk straight, and was tired and drowsy, He begged to delay the interview to another time after he was able to recover. Detective Horn declined to delay the interview because the detectives would not be able to talk to defendant after he was arraigned and had an attorney appointed. Detective Horn told defendant he had interviewed people "convulsing on the floor, and they can still answer the questions."

Detective Horn advised defendant of his *Miranda*[2] rights. During the interview and after the advisement, defendant said he wanted to talk "off the record." Detective Horn assured defendant that they were off the record. Defendant said, "So, none of this

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

can be used against me . . . [¶] . . . in a court of law, what we're talking about right now." Detective Horn said, "Correct." This type of exchange in which defendant asked for and received assurances that what was being said was off the record and could not be used in a court of law occurred several times.

During the interview, defendant made both incriminating and exculpating statements. When Detective Horn accused defendant of possessing heroin for sale, defendant said it was for personal use. Defendant offered to tell the detectives where a gun was in an effort to get the gun off the streets because he was raised Christian. He said he did not know anything about the guns found in the backpack in the motel room; however, after further questioning and further protests that he was not feeling well, he said he knew about the guns. He denied having involvement with a pawn shop receipt in Manoff's name or with the jewelry that Manoff sold. He denied that he, in Detective Horn's words, "victimized about 25 people." He denied being at the locations of the burglaries. He claimed the motel room was Manoff's and he stayed there only a few nights. He admitted growing up with the Arens brothers, but he denied burglarizing the Arens' homes. He admitted he may have gone to Greenstone Country, the location of some of the burglaries, but only to sleep in the car.

Eventually, defendant admitted being present for or involved in some of the burglaries but continued to deny others. He claimed someone else's crew used pillow cases in burglaries. He admitted burglaries in Pollock Pines, including the Arens' home, but not in Camino. He said in one of the burglaries he accidentally discharged a gun and at a police officer's house he and Manoff only stole jewelry. He said he did not take a shotgun from under the mattress. Instead, he moved a shotgun from one side of the closet to the other side. He and Manoff took the jewelry to pawn shops. One of the recovered guns came from one of the burgled homes. When Detective Horn accused defendant of up to 40 burglaries, defendant said, "No, we didn't do that many." He added, "maybe five, six." He continued to deny many of the accusations made by the detectives.

Regarding the money found in his possession, defendant claimed he had it for a long time; he had saved it to buy a truck.

The trial court admitted into evidence defendant's interview statements to the police. Defense counsel did not object or move to suppress the statements.

In closing argument, defense counsel identified various evidentiary problems with establishing that defendant was guilty of each charged crime. He spoke at length about defendant's statement to the detectives, pointing out that defendant was "drug sick" from heroin withdrawal. He focused on defendant's confusion about the burglaries. Defense counsel attacked defendant's statements as involuntary and argued defendant never clearly admitted any specific burglaries or thefts. He pointed to the addiction of Manoff and defendant and claimed the evidence of heroin possession only supported personal use. Defense counsel also referenced defendant's denial that the motel room was his; he only stayed there on occasion. In addition, he argued the evidence did not tie defendant to the backpack found in the motel room containing guns and ammunition. Defense counsel said defendant denied taking a safe or committing the Felton burglary and that he had money to buy a truck.

B

Failure to object to admission of evidence at trial forfeits the matter on appeal. (Evid. Code, § 353, subd. (a); *People v. Demetrulias* (2006) 39 Cal.4th 1, 20.) Defendant did not object to admission of his statement or move to suppress it in the trial court and has thereby forfeited the contention that it was improperly admitted.

Acknowledging the failure to object, defendant argues his trial counsel was ineffective. "To prevail [on a claim of ineffective assistance of counsel], [a defendant] must establish his counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel's deficient performance, the result of the trial would have been different." (*People v. Mesa* (2006) 144 Cal.App.4th 1000, 1007.) " ' "The burden of sustaining a charge of inadequate or

ineffective representation is upon the defendant. The proof . . . must be a demonstrable reality and not a speculative matter." [Citation.]' " (*Ibid.*)

"Reviewing courts will reverse convictions on the ground of inadequate counsel only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for his act or omission." (*People v. Zapien* (1993) 4 Cal.4th 929, 980.) "The decision whether to object to the admission of evidence is 'inherently tactical,' and a failure to object will rarely reflect deficient performance by counsel." (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1335.) " ' "Tactical errors are generally not deemed reversible, and counsel's decisionmaking must be evaluated in the context of the available facts." [Citation.]' " (*People v. Stanley* (2006) 39 Cal.4th 913, 954.) In general, it is inappropriate for an appellate court to speculate as to the existence or nonexistence of a tactical basis for a defense attorney's course of conduct. (*People v. Wilson* (1992) 3 Cal.4th 926, 936.) Accordingly, "when the record on appeal does not illuminate the basis for the attorney's challenged acts or omissions, a claim of ineffective assistance is more appropriately made in a habeas corpus proceeding, in which the attorney has the opportunity to explain the reasons for his or her conduct." (*Ibid.*)

"On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation." (*People v. Mai* (2013) 57 Cal.4th 986, 1009; see *People v. Mickel* (2016) 2 Cal.5th 181, 198 [reversal is warranted on direct appeal only if there is "affirmative evidence that counsel had ' " 'no rational tactical purpose' " ' for an action or omission"].)

Here, even if we were to assume that defendant's statements would have been suppressed had trial counsel moved to suppress them, the record is insufficient to reverse defendant's convictions because it does not affirmatively establish that trial counsel had no rational tactical purpose for not moving to suppress. The evidence of defendant's

guilt was compelling even without his statements, and defense counsel may have determined that the statements could be helpful to the defense. In closing argument, defense counsel used defendant's statements to argue that defendant was not involved in all of the burglaries, was only loosely connected to the motel room where much of the evidence was found, and did not possess the heroin for sale. Defendant's statements gave the jury an alternate reason for the cash found in his possession, and it offered evidence that there were other "crews" committing burglaries. While it appears the jury did not credit some of these arguments, it was unable to reach a verdict on the possession for sale count.

Defendant argues that without his statements, there was no evidence of any kind to connect him to the July burglary of the Felton residence, because that offense was not described by Manoff. He further argues that without his statements there would have been insufficient evidence to corroborate Manoff's accomplice testimony. But defendant cites no authority for the proposition that, if a defendant's statement provides the sole evidence of one of many counts against defendant, defense counsel can have no rational tactical purpose in not objecting to admission of the defendant's statement. We know of no such authority. (See *Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794 [failure to cite authority forfeits contention].) In any event, defendant's arguments do not establish that there could be no rational tactical purpose not to object; as we have explained, possible tactical reasons existed for allowing the statements.

Defendant also does not provide authority for the proposition that allowing admission of a potentially suppressible statement constitutes ineffective assistance of counsel if, in some regards, the statement supplied corroborating evidence for an accomplice's testimony. On this record, we see no reason that trial counsel could not weigh the pros and cons of allowing admission of defendant's statement.

Because the other evidence of defendant's guilt was compelling and counsel used defendant's statements in an attempt to convince the jury that defendant was not guilty of

some of the charges, we cannot say defense counsel had no rational tactical purpose in not objecting to, or in not moving to suppress, defendant's statements. Accordingly, the ineffective assistance claim does not succeed.

II

Defendant next claims there was insufficient evidence to corroborate the testimony of Manoff, his accomplice, as to the burglaries.

A

A defendant cannot be convicted based on the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence that tends to connect the defendant with the commission of the offense. (§ 1111; see also *People v. Perez* (2018) 4 Cal.5th 421, 452.) Corroborating evidence need not directly connect the accused with the offense but need only tend to do so. The requisite evidence " 'need not independently establish the identity of the [perpetrator]' [citation], nor corroborate every fact to which the accomplice testifies [citation]." (*People v. Romero and Self* (2015) 62 Cal.4th 1, 32 (*Romero*).)

" '[C]orroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.' " (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1176, fn. 13 (*Samaniego*).) But it may be circumstantial, slight and entitled to little consideration when standing alone. (*Id*. at p. 1177.) "It must raise more than a suspicion or conjecture of guilt, and is sufficient if it connects the defendant with the crime in such a way as to reasonably satisfy the trier of fact as to the truthfulness of the accomplice." (*Id*. at p. 1178.)

" 'The entire conduct of the parties, their relationship, acts, and conduct may be taken into consideration by the trier of fact in determining the sufficiency of the corroboration.' " (*Romero, supra,* 62 Cal.4th at p. 32.) Evidence corroborating details of the crime may form part of a picture from which the jury may be satisfied that the accomplice is telling the truth when considered with other evidence tending to connect

the defendant to the crime. (*People v. Pedroza* (2014) 231 Cal.App.4th 635, 657, 659) We must eliminate from the case the evidence of the accomplice, and then examine the remaining evidence to ascertain if it tends to connect the defendant with the offense. (*People v. Shaw* (1941) 17 Cal.2d 778, 804.)

The jury in this case was properly instructed on the corroboration requirement. (CALCRIM No. 335) Unless we determine the corroborating evidence should not have been admitted or that it could not reasonably tend to connect defendant with the commission of the crimes, the finding on the issue of corroboration may not be disturbed on appeal. (*People v. Szeto* (1981) 29 Cal.3d 20, 27.)

B

With those principles in mind, we summarize as to each challenged burglary conviction the evidence corroborating Manoff's testimony concerning defendant's participation in the burglaries:

Count 1 (Nissen): Defendant led police to a gun taken in the burglary and admitted that he accidentally discharged the gun into the bed.

Count 2 (Allessio): Items taken in the burglary were found in the motel room, along with some of defendant's personal items. Defendant's cell phone was in the area at the time of the burglary.

Count 9 (Little): Defendant acknowledged he burglarized the home of a police officer who had an Asian wife. Defendant's cell phone was in the area at the time of the burglary.

Count 10 (Salinger): Defendant and Manoff went together to pawn the items taken from the Salinger home. (This evidence does not merely tie defendant to Manoff but also to the stolen items and, therefore, the burglary.)

Count 11 (Lawrence and Nancy Arens): Defendant admitted he participated in the burglary of the home of Lawrence and Nancy Arens. Defendant's cell phone was in the area at the time of the burglary.

Count 12 (Niven): Some of the stolen items were found in the motel room. Defendant's cell phone was in the area at the time of the burglary.

Count 13 (Rooker): Defendant and Manoff went together to pawn the items taken from the Salinger home, which was burglarized on the same day and in the same neighborhood where defendant attempted to burglarize the Rooker home.

Count 14 (Danny and Jerri Arens): Defendant admitted he participated in the burglary of the home of Danny and Jerri Arens. Defendant's cell phone was in the area at the time of the burglary, and some of the stolen items were found in the motel room, as were some of defendant's personal items.

Count 15 (McCarthy): Defendant's cell phone was in the area at the time of the burglary.

Count 16 (Nissen): Same as count 1 -- defendant led police to a gun taken in the burglary.

For each burglary about which Manoff testified, there was evidence that corroborated her testimony, tying defendant to the offense, even if the evidence was slight, circumstantial, or entitled to little consideration standing alone. (*Samaniego, supra,* 172 Cal.App.4th at pp. 1177-1178.) Much of defendant's argument to the contrary is based on the premise that his own statement was inadmissible. Because he forfeited consideration of the admissibility of his own statement by not objecting or moving to suppress, we need not consider whether there was sufficient corroborating evidence independent of defendant's statement. In any event, we also note that, as to each count that defendant admitted, there was other corroborating evidence, such as the presence of his cell phone in the vicinity of the crime.

The Attorney General argues the pattern of burglaries engaged in by defendant and Manoff also corroborated Manoff's testimony as to each burglary. We need not consider this argument because the corroborating evidence already discussed is sufficient.

Defendant's contention that there was insufficient corroboration of Manoff's accomplice testimony regarding the burglaries is without merit.

III

In addition, defendant argues the trial court improperly imposed two one-year sentence enhancements under section 667.5, subdivision (b).

The trial court imposed two one-year enhancements for prior prison terms. (§ 667.5, subd. (b).) Defendant contends only one prior-prison-term enhancement could be imposed because only one prior prison term was alleged and the record does not support a finding of a second prior prison term. The Attorney General agrees, as do we.

The amended information on which defendant was tried alleged he had three prior felony convictions and that he "served a term as described in Penal Code section 667.5 for said offense, and that he did not remain free of prison custody for, and did commit an offense during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5(b)."

The prosecution presented evidence of the three prior felony convictions: (1) a 1999 conviction for robbery (§ 211); (2) a 2001 conviction for possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)); and (3) a 2001 conviction for illegal possession of a firearm (former § 12021.1, subd. (a)). But the prosecution presented evidence of only one prior prison term, which occurred after his 2001 convictions.

Multiple enhancements under section 667.5, subdivision (b) may be imposed only for separate prison terms. (*People v. Medina* (1988) 206 Cal.App.3d 986, 990.) Because the record only shows one prior prison term, the trial court should not have imposed two enhancements under section 667.5, subdivision (b). We must strike the second prior prison term enhancement.

Defendant further asserts that *neither* enhancement for a prior prison term under section 667.5, subdivision (b) can be upheld on appeal because the trial court did not ask

defendant to admit that he served a prior prison term and no such finding was made by the trier of fact. We disagree.

Generally, if the information alleges that a defendant served a prison term for a prior conviction, a defendant admits the prison term when he admits the prior conviction. (*People v. Cardenas* (1987) 192 Cal.App.3d 51, 61; see also *People v. Ebner* (1966) 64 Cal.2d 297, 303 [noting that a defendant's admission of prior convictions "is not limited in scope to the fact of the convictions, but extends to all allegations concerning the felonies contained in the information"].) A reviewing court considers the totality of the circumstances of the entire proceeding in determining whether a defendant has voluntarily and intelligently admitted an allegation. (*People v. Mosby* (2004) 33 Cal.4th 353, 356.)

Section 667.5, subdivision (b) provides for a one-year sentence enhancement if the defendant served a prior prison term and did not remain free from prison custody for five years before committing the current offenses. Here, the amended information alleged defendant served a prison term for his prior felony convictions and did not remain free of custody for five years before committing the present offenses. The record establishes that defendant actually served a prior prison term and did not remain free of custody for five years before committing the present offenses. The trial court advised defendant of his constitutional rights to jury trial, to confrontation, and to presentation of a defense, and further informed defendant that admitting the prior convictions would have the effect of enhancing the penalties or punishments. The parties stipulated to a factual basis for the prior convictions, and defendant admitted the three prior convictions.

Although the trial court did not ask defendant to admit that he served a prior prison term and that he did not remain free of custody for five years before committing the present offenses, defendant's admission to the prior felony convictions, along with the record supporting the elements of a section 667.5, subdivision (b) enhancement, were

sufficient, under the totality of the circumstances, to support imposing the one-year enhancement.

Defendant does not even mention *People v. Cardenas, supra*, 192 Cal.App.3d 51, let alone attempt to distinguish it or argue based on authority that it was wrongly decided. His contention fails.

IV

Defendant claims the matter must be remanded for resentencing or for further proceedings because the trial court did not explain the precise penal consequences of admitting prior strike and prior serious felony conviction allegations.

Before accepting defendant's admission of his prior convictions, the trial court advised defendant of his constitutional rights and informed him that the prior convictions would have the effect of enhancing the penalties or punishments. Defendant then admitted he was convicted of a violation of section 211 (robbery) in 1999. He also admitted he was convicted of violations of former section 12021.1, subdivision (a) (restriction on firearm possession) and Health and Safety Code section 11377 (unauthorized possession of a controlled substance) in 2001. Defendant's admissions of the prior convictions resulted in several enhancements to the sentence. The term for each present offense was doubled because the prior robbery conviction was a strike offense. In addition, the trial court initially sentenced defendant to 17 consecutive five-year terms for the prior serious felony conviction, one five-year term for each new conviction. But when the trial court was apprised of new precedent precluding imposition of more than one five-year enhancement for each prior serious felony conviction, the trial court recalled the sentence and sentenced defendant anew, properly imposing only one five-year term. (See *People v. Sasser* (2015) 61 Cal.4th 1.) The trial court sentenced defendant to an additional five years for a prior serious felony conviction and one year for a prior prison term.

Before the trial court may accept a defendant's admission of a prior conviction, the defendant must be advised of "the precise increase in the term or terms which might be imposed" because of the prior conviction. (*In re Yurko* (1974) 10 Cal.3d 857, 863-864; see *People v. Mosby* (2004) 33 Cal.4th 353, 360.)

Defendant argues the trial court's advisements were not precise enough. He claims the trial court did not inform him that (1) admission of the prior strike conviction would double his base terms and (2) admission of the prior serious felony conviction would add decades to his prison term. The second assertion, that the admission would add decades in prison, refers to the improper 17 consecutive five-year terms. The assertion is unsupported because the trial court changed the improper sentence and did not have a duty to advise defendant of such an incorrect penal consequence. As for the first assertion -- failure to inform defendant that admission of the prior strike conviction would double his base terms -- defendant did not object on this ground in the trial court and thus forfeited the contention.

The Attorney General states in the respondent's brief that defendant's failure to object did not forfeit the issue for appeal. As support for this statement, the Attorney General cites *People v. Cross* (2015) 61 Cal.4th 164, 172-173, which held that an appellate claim that the trial court failed to advise of the *constitutional right to trial by jury* is not forfeited on appeal by failure to object in the trial court. But that holding does not apply here, because failure to advise on penal consequences does not implicate constitutional rights.

The California Supreme Court held that forfeiture applies to a failure to advise of the penal consequences of a defendant's guilty plea. (*People v. Walker* (1991) 54 Cal.3d 1013, 1022-1023, overruled on other grounds as stated in *People v. Villalobos* (2012) 54 Cal.4th 177, 183.) Although a trial court is constitutionally mandated to advise a defendant who is pleading guilty of the constitutional rights being waived, advisement of the penal consequences of the guilty plea is a judicially declared rule of procedure, not a

constitutional mandate. Failure to object in the trial court that the trial court did not advise the defendant of constitutional rights does not forfeit the claim on appeal (*People v. Trujillo* (2015) 60 Cal.4th 850, 859), but forfeiture applies to failure to advise of penal consequences. (*People v. Walker, supra*, at p. 1023.) "[W]hen the only error is a failure to advise of the consequences of the plea, the error is waived if not raised at or before sentencing. Upon a timely objection, the sentencing court must determine whether the error prejudiced the defendant, i.e., whether it is 'reasonably probable' the defendant would not have pleaded guilty if properly advised. [Citation.]" (*Ibid.*; see also *People v. Villalobos, supra*, 54 Cal.4th at pp. 181-182.)

Because defendant did not object in the trial court to the trial court's failure to advise of the penal consequences of defendant's admission of the prior strike conviction, he forfeited that issue and may not raise it on appeal.

DISPOSITION

The judgment is modified to strike the second one-year enhancement imposed pursuant to section 667.5, subdivision (b). As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the modified judgment and to send the amended abstract of judgment to the Department of Corrections and Rehabilitation.

/S/
MAURO, Acting P. J.

We concur:

/S/
HOCH, J.

/S/
RENNER, J.